

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ZUNUM AERO, INC.,

Plaintiff,

v.

THE BOEING COMPANY, et al.,

Defendants.

CASE NO. C21-0896JLR

ORDER

I. INTRODUCTION

Before the court is Defendants The Boeing Company and Boeing HorizonX Ventures, LLC's (together, "Boeing") motion for judgment as a matter of law or, in the alternative, for a new trial. (Mot. (Dkt. # 695); Reply (Dkt. # 740).) Plaintiff Zunum Aero, Inc. ("Zunum") opposes the motion. (Resp. (Dkt. # 737).) The court has considered the parties' submissions, the relevant portions of the record, and the

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1 applicable law. Being fully advised,¹ the court GRANTS Boeing’s motion for judgment
 2 as a matter of law.

3 II. BACKGROUND²

4 Zunum strived to be the Tesla of commercial aviation. Its founders, Matt Knapp
 5 and Dr. Ashish Kumar, believed their company could make air travel greener, faster, and
 6 more affordable using electric and hybrid-electric (“HE”) technologies. Operating a jet
 7 startup, however, is an expensive endeavor. Before Zunum could shock the industry, it
 8 needed some money.

9 In August 2016, Zunum identified Boeing as a potential investor. The companies
 10 executed a proprietary information agreement (the “2016 PIA”), under which Boeing
 11 agreed to keep Zunum’s information confidential, and Zunum agreed to share some of its
 12 proprietary documents with Boeing. Boeing liked what it saw: in March 2017, Boeing
 13 loaned Zunum \$5,000,000 through a note purchase agreement (the “2017 NPA”), and in
 14 May 2018, it loaned Zunum an additional \$4,000,000 (the “2018 NPA”). Each NPA was
 15 executed alongside an investment rights letter, under which Zunum shared more
 16 proprietary information with Boeing for limited purposes, such as evaluating Zunum’s
 17 technical claims (the “2017 IRL” and “2018 IRL”).

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19 ¹ Neither party requests oral argument (*see* Mot. at 1; Resp. at 1), and the court
 20 concludes that oral argument would not aid in its disposition of Boeing’s motion, *see* Local
 21 Rules W.D. Wash. LCR 7(b)(4). Boeing also filed a notice of supplemental authority (Not. (Dkt.
 # 743)), which the court concludes is irrelevant to the court’s analysis because it concerns
 damages, which the court does not reach in this order.

22 ² For additional background information, see the court’s summary judgment orders.
 (4/22/24 Order (Dkt. # 560); 5/9/24 Order (Dkt. # 601).)

1 Boeing was not the only company with which Zunum was interested in forming an
2 alliance. In addition to the American aerospace titan, Zunum had hoped to partner with
3 United Technologies Aerospace Systems (“UTAS”) and companies associated with
4 Safran S.A. (“Safran”). UTAS and Safran, however, did not invest in Zunum. Nor did
5 any other company. By October 2018, Zunum was out of runway, and Boeing was
6 unwilling to invest more. Unable to secure additional funding, Zunum furloughed its
7 employees and shuttered its doors.

8 Zunum persisted functionally as a non-operating entity. Mr. Knapp and Dr.
9 Kumar continued to believe in Zunum’s technology, however, and they wanted to know
10 why Zunum had crashed before it ever caught flight. Their answer? Boeing. In
11 November 2020, Zunum sued Boeing in King County Superior Court. Zunum threw the
12 kitchen sink at Boeing, bringing counts for: (1) violation of the Washington Uniform
13 Trade Secrets Act (“WUTSA”); (2) breach of the 2016 PIA; (3) breach of the 2017 IRL;
14 (4) breach of the 2018 IRL; (5) declaratory judgment of no obligation to repay the 2017
15 and 2018 NPAs; (6) breach of the implied covenant of good faith and fair dealing;
16 (7) breach of fiduciary duty; (8) tortious interference with a business expectancy;
17 (9) violation of the Washington Consumer Protection Act (“WCPA”) for an unlawful
18 contract, combination, or conspiracy in restraint of trade; (10) violation of the WCPA for
19 unlawful monopolization; (11) violation of the WCPA for unfair practices harmful to the
20 public interest; and (12) violation of the Securities Act of Washington (“SAW”). (1st
21 Am. Compl. (Dkt. # 1-1) ¶¶ 405-576.) Zunum alleged that “Boeing stole Zunum’s

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1 technology and disclosed it to Boeing's partners to accelerate Boeing's own roadmaps by
2 two decades, while intentionally hobbling Zunum." (*Id.* ¶ 20.)

3 Boeing fired back, filing counterclaims for: (1) breach of the 2017 NPA;
4 (2) breach of the 2018 NPA; (3) declaratory judgment of no breach of the 2017 IRL;
5 (4) declaratory judgment of no breach of the 2018 IRL; and (5) declaratory judgment of
6 patent inventorship. (1st Answer (Dkt. # 1-2).) Boeing responded that it "wanted Zunum
7 to succeed" but ultimately could not handle the turbulence of Mr. Knapp's and Dr.
8 Kumar's mismanagement and "lack[of] a realistic business plan." (*Id.* ¶¶ 19, 21.)
9 According to Boeing, Mr. Knapp and Dr. Kumar refused to "accept help [Zunum]
10 obviously needed" while "insist[ing] on a valuation well in excess of \$100 million,"
11 despite Boeing's and other companies' disagreement. (*Id.* ¶¶ 18, 20.)

12 Boeing removed the case to this court in July 2021. (Removal Not. (Dkt. # 1).)
13 The following month, the parties estimated a trial length of 10 days, noting that "[t]he
14 number of trial days required may be fewer if any claims are resolved via motion practice
15 prior to trial." (JSR (Dkt. # 37) at 8.) The court gave the parties eight days to conduct
16 their trial. (*See* 9/23/21 Sched. Order (Dkt. # 42).) As the case propelled toward trial, it
17 became considerably leaner. By early May 2024, Boeing had prevailed on Zunum's
18 claims for breach of the 2018 IRL, declaratory judgment, breach of the implied covenant
19 of good faith and fair dealing, breach of fiduciary duty, and violations of the WCPA and
20 SAW. (*See generally* 6/13/22 Order (Dkt. # 58); 8/12/22 Order (Dkt. # 67); 4/22/24
21 Order; 5/9/24 Order.) Boeing had also prevailed on its counterclaims for breach of the
22 2017 and 2018 NPAs, declaratory judgment of no breach of the 2018 IRL, and

1 declaratory judgment of patent inventorship. (*See generally* 4/22/24 Order; 5/9/24
 2 Order.) As a result, all that was left for trial were Zunum’s claims for trade secret
 3 misappropriation, breach of the 2016 PIA and 2017 IRL, and tortious interference with
 4 business expectancies concerning UTAS and Safran. (*See generally* Pretrial Order (Dkt.
 5 # 742).) Although the scope of trial was dramatically narrowed, the court did not shorten
 6 the trial beyond what it originally allowed for in its scheduling order. The eight-day trial
 7 took off on May 16, 2024, with the court giving each side 19.5 hours to present its case.
 8 (*See* 3/25/24 Min. Entry (Dkt. # 487).) During trial, the court granted the parties an
 9 additional 90 minutes each for closing arguments. (5/23/24 Tr. (Rough)³ at 7:14-18.)

10 At the outset of trial, the court provided the jurors with short descriptions of each
 11 of Zunum’s alleged trade secrets which were derived from a modified interrogatory
 12 response Zunum submitted to the court. (*See generally* Ex. 2000. Zunum Modified Rog
 13 (Dkt. # 625 (sealed)).) The court did so to ensure that the jurors would “be on the same
 14 page [as the parties] about what exactly Zunum claims are [its] trade secrets.” (5/1/24
 15 Pretrial Hr’g Tr. (Dkt. # 594) at 27:3-7.) The court rejected Zunum’s proposed trade
 16 secret descriptions, which consisted of more than “500 pages of definitions and
 17 accompanying exhibits,” because it was “too voluminous” to be helpful to the jury.
 18 (5/14/24 Min. Order (Dkt. # 634) at 1-2.) The court explained to the jurors that Exhibit
 19 2000 was “the equivalent of a demonstrative” and instructed that they “should not take

20 ³ Because the parties rely on the court reporter’s daily rough transcripts for their
 21 post-trial briefing, the court also cites the rough transcripts in this order. (*See generally* Mot.;
 22 Resp.; Reply.) The court notes, however, that the rough transcripts are not the definitive record
 of the trial proceedings.

1 this exhibit to mean that Zunum possessed the information discussed therein, [or] that any
2 information therein constitutes a trade secret.” (5/17/24 Tr. (Rough) at 92:20-22,
3 94:14-22.)

4 Zunum’s first witness was Mr. Knapp, whose testimony took the majority of the
5 trial day on May 17. (*See id.* at 73:2-200:14.) During that time, he briefly discussed
6 some, but not all, of Zunum’s 19 alleged trade secrets (“ATs”), the 2016 PIA, the 2017
7 IRL and Boeing’s corresponding \$5 million investment, and Zunum’s attempts to secure
8 investments from UTAS and Safran. (*See generally id.*) Zunum called several Boeing
9 employees during its case-in-chief, primarily to discuss Boeing’s relationship with
10 Zunum and Boeing’s purported use of Zunum’s “secret sauce.”⁴ Zunum did not call its
11 first expert until May 22, the fifth day of trial. That expert, Viswanath Tata, testified on
12 direct for approximately 42 minutes. (*See* 5/22/24 Tr. (Rough) at 12:16-41:14.) In that
13 time, he attempted to introduce the jury to seven alleged trade secrets, explain why those
14 trade secrets met the statutory definition of a trade secret, and describe Boeing’s
15 purported use of Zunum’s trade secret information. (*See generally id.*) Zunum’s next
16 expert, Luiz Andrade, also attempted to discuss seven alleged trade secrets in just 42
17 minutes on direct. (*See id.* at 132:7-154:6.) Dr. Kumar’s testimony began later on May
18 22 and stretched into the morning of May 23. (*See id.* at 207:10-214:12; 5/23/24 Tr.
19 (Rough) at 8:21-63:23.) During that time, he discussed the 2016 PIA, the 2017 IRL, and
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21 ⁴ Boeing employee Steven Shumate wrote in a January 2017 email that he sensed Zunum
22 had a “secret sauce.” (Ex. 98 at 1.) That phrase was repeated nearly 40 times over the course of
the trial, including six times in Zunum’s closing argument.

1 Zunum’s relationships with UTAS and Safran. (*See* 5/22/24 Tr. (Rough) at
2 207:10-214:12; 5/23/24 Tr. (Rough) at 8:21-63:23.) Dr. Kumar did not discuss any
3 specific alleged trade secrets by number, but he did testify that Zunum kept its alleged
4 trade secret information confidential and was seeking \$163 million in damages for “the
5 destruction of the company.” (5/23/24 Tr. (Rough) at 19:12-15, 62:5-9.) Zunum spent
6 the rest of May 23 with another Boeing witness and called its final trade secret expert—
7 Donald Garvett—on May 24. Zunum spent just 33 minutes examining Mr. Garvett on
8 direct regarding Zunum’s final five alleged trade secrets. (5/24/24 Tr. (Rough) at
9 29:8-50:19.) Zunum had just enough time remaining of its original 19.5 hours to put on
10 its damages expert before resting later that day. (*Id.* at 79:10-164:8.) Zunum did not call
11 any witnesses from UTAS or Safran.

12 After Zunum rested, Boeing moved under Federal Rule of Civil Procedure 50(a)
13 for judgment as a matter of law on Zunum’s claims. (*See id.* at 196:21-197:4.) With
14 respect to Zunum’s claim for trade secret misappropriation, Boeing argued that Zunum
15 had failed to “identif[y] with the requisite specificity, what the trade secrets are” or
16 “identif[y] what specific elements of the trade secrets were already developed.” (*Id.* at
17 197:6-10.) Boeing also argued that Zunum had failed to specify “what elements of these
18 trade secrets were valuable,” “what elements of the trade secrets were not already made
19 public through [Zunum’s] own disclosure,” or what “was used by [Boeing].” (*Id.* at
20 197:15-24.)

21 Boeing argued that Zunum’s breach of contract claims likewise failed “for the
22 same reasons particularly given [Zunum] has identified that it is the same things that

1 underlie their trade secret claim that underlie their breach of contract claim[s].” (*Id.* at
2 198:4-8.) Boeing also argued that Zunum failed to present evidence showing that
3 Boeing’s “use of any purportedly confidential information . . . was unauthorized or
4 improper.” (*Id.* at 198:9-13.)

5 Finally, regarding tortious interference with Zunum’s expectancies with UTAS
6 and Safran, Boeing argued that “the only evidence in the record is Zunum chose not to do
7 those deals. Zunum thought the deals were bad, they thought the contracts were
8 egregious, they thought they were being taken advantage of. In Zunum’s own words[,]
9 they walked away from these deals.” (*Id.* at 198:16-22.) Boeing further argued that
10 “we’ve seen no paper about these deals, [and] no commitment from any of these
11 companies is in the record.” (*Id.* at 198:25-199:1.) The court reserved ruling on
12 Boeing’s Rule 50(a) motion.

13 The jury returned a mixed verdict, finding for Zunum on some claims and Boeing
14 on others. (*See generally* Verdict (Dkt. ## 684 (sealed), 685 (redacted)).) The jury found
15 that Boeing had willfully misappropriated 11 of the 19 alleged trade secrets, breached the
16 2017 IRL, and tortiously interfered with Zunum’s business expectancy with Safran. (*See*
17 *generally id.*) The jury awarded Zunum \$67.08 million for trade secret misappropriation
18 and breach of contract, \$14.15 million for unjust enrichment as a result of the trade secret
19 misappropriation, and \$11.56 million for tortious interference. (*Id.* at 5, 7, 9.) The jury
20 also found, however, that Boeing had not breached the 2016 PIA or tortiously interfered
21 with Zunum’s business expectancy with UTAS, and that Zunum had failed to mitigate

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1 \$20.82 million in damages. (*Id.* at 6, 8, 10.) Altogether, it was an electrifying win for
 2 Zunum.

3 To ensure that it was fully briefed on all issues, the court permitted the parties to
 4 file overlength briefs with respect to Boeing’s renewed motion under Federal Rule of
 5 Civil Procedure 50(b). (*See* 6/7/24 Order (Dkt. # 691).) Boeing’s motion is now ripe for
 6 review.

7 **III. ANALYSIS**

8 The court provides the relevant legal standard before turning to Zunum’s claims
 9 for trade secret misappropriation, breach of contract, and tortious interference.

10 **A. Rule 50(b) Legal Standard**

11 “Under Rule 50, a court should render judgment as a matter of law when ‘a party
 12 has been fully heard on an issue and there is no legally sufficient evidentiary basis for a
 13 reasonable jury to find for that party on that issue.’” *Reeves v. Sanderson Plumbing*
 14 *Prods., Inc.*, 530 U.S. 133, 149 (2000) (quoting Fed. R. Civ. P. 50(a)). This is a “very
 15 high” standard. *Costa v. Desert Palace, Inc.*, 299 F.3d 838, 859 (9th Cir. 2002). The
 16 jury’s verdict “must be upheld if it is supported by substantial evidence,” that is,
 17 “evidence adequate to support the jury’s conclusion, even if it is also possible to draw a
 18 contrary conclusion from the same evidence.” *Johnson v. Paradise Valley Unified Sch.*
 19 *Dist.*, 251 F.3d 1222, 1227 (9th Cir. 2001). In conducting its analysis, “the court should
 20 review all of the evidence in the record,” “draw[ing] all reasonable inferences in favor of
 21 the nonmoving party, and it may not make credibility determinations or weigh the
 22 evidence.” *Reeves*, 530 U.S. at 150; *see also Lakeside-Scott v. Multnomah Cnty.*, 556

1 F.3d 797, 802-03 (9th Cir. 2009) (noting that judgment as a matter of law “is appropriate
 2 when the jury could have relied only on speculation to reach its verdict”). Ultimately,
 3 “[t]he test is whether ‘the evidence, construed in the light most favorable to the
 4 nonmoving party, permits only one reasonable conclusion, and that conclusion is contrary
 5 to that of the jury.’” *Est. of Diaz v. City of Anaheim*, 840 F.3d 592, 604 (9th Cir. 2016)
 6 (quoting *White v. Ford Motor Co.*, 312 F.3d 998, 1010 (9th Cir. 2002)).

7 “Because it is a renewed motion, a proper post-verdict Rule 50(b) motion is
 8 limited to the grounds asserted in the pre-deliberation Rule 50(a) motion.” *E.E.O.C. v.*
 9 *Go Daddy Software, Inc.*, 581 F.3d 951, 961 (9th Cir. 2009); *see also* Fed. R. Civ. P.
 10 50(b) (governing renewed motions for judgment as a matter of law). “Thus, a party
 11 cannot properly ‘raise arguments in its post-trial motion for judgment as a matter of law
 12 under Rule 50(b) that it did not raise in its preverdict Rule 50(a) motion.’” *Id.* (quoting
 13 *Freund v. Nycomed Amersham*, 347 F.3d 752, 761 (9th Cir. 2003)).

14 **B. Trade Secret Misappropriation**

15 Boeing argues that it is entitled to judgment as a matter of law on Zunum’s claim
 16 for trade secret misappropriation because Zunum failed to: (1) sufficiently identify its
 17 alleged trade secrets; (2) provide substantial evidence that the alleged trade secrets were
 18 valuable and not generally known or readily ascertainable; and (3) provide substantial
 19 evidence that Boeing improperly used the alleged trade secrets. (*See* Mot. at 9-25.)

20 Zunum counters that (1) it was not required to identify the alleged trade secrets “with

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‘particularity,’”⁵ (2) regardless, it provided substantial evidence identifying the alleged trade secrets, (3) its experts explained why the alleged trade secrets were novel and valuable, and (4) direct and circumstantial evidence adequately supports the jury’s findings of misappropriation. (Resp. at 1, 5, 9, 11-13.) The court agrees with Boeing that Zunum failed to identify any of its alleged trade secrets with sufficient particularity or prove by substantial evidence that its alleged trade secrets derived value from not being generally known to or readily ascertainable by others. The court therefore does not consider whether substantial evidence supports the jury’s findings of misappropriation. *See MAI Sys. Corp. v. Peak Comput., Inc.*, 991 F.2d 511, 522 (9th Cir. 1993) (finding that a failure to “specifically identify the[] trade secrets” meant that the court could not “determine whether [the defendant] ha[d] misappropriated any trade secrets”).

1. Trade Secret Standard

The first element of a trade secret misappropriation claim requires the plaintiff to establish that it “possessed a trade secret.” *InteliClear, LLC v. ETC Glob. Holdings, Inc.*, 978 F.3d 653, 657 (9th Cir. 2020) (interpreting the federal Defend Trade Secrets Act (“DTSA”)); *see also Traverse Therapy Servs., PLLC v. Sadler-Bridges Wellness Grp., PLLC*, No. C23-1239MJP, 2024 WL 381180, at *3 (W.D. Wash. Feb. 1, 2024) (“The

⁵ Zunum also argues that Boeing waived its “particularity” argument because it “requested an instruction in this vein pre-trial, but did not object that the final instructions omitted it.” (Resp. at 9.) Such waiver, however, applies only to Boeing’s “[c]hallenges to jury instructions,” *Crowley v. Epicept Corp.*, 883 F.3d 739, 748 (9th Cir. 2018), and Boeing preserved this argument in its oral summary of its Rule 50(a) motion (*see* 5/24/24 Tr. (Rough) at 197:5-10 (arguing that Zunum failed to identify the alleged trade secrets “with the requisite specificity”)).

elements of a DTSA and UTSA claim are substantially similar.”). A trade secret is any information that “[d]erives independent economic value . . . from not being generally known to, and not being readily ascertainable by proper means by, other persons” and “[i]s the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” RCW 19.108.010(4).

In order for a factfinder to determine whether information meets the statutory definition of a trade secret, the plaintiff must “describe the subject matter of the trade secret with *sufficient particularity* to separate it from matters of general knowledge in the trade or of special knowledge of those persons . . . skilled in the trade.” *InteliClear*, 978 F.3d at 658 (quoting *Imax Corp. v. Cinema Techs., Inc.*, 152 F.3d 1161, 1164 (9th Cir. 1998)). Zunum argues that the “WUTSA does not require testimony identifying trade secrets with ‘particularity’” (Resp. at 9), but Washington courts are clear that trade secret plaintiffs “must provide specific, concrete examples illustrating that the . . . information meets the requirements for a trade secret” as part of their “burden of proving a trade secret,” *Belo Mgmt. Servs., Inc. v. Click! Network*, 343 P.3d 370, 375 (Wash. Ct. App. 2014). This requirement makes sense; “[c]ourts and juries . . . require precision because . . . the district court or trier of fact will not have the requisite expertise to define what the plaintiff leaves abstract.” *InteliClear*, 978 F.3d at 658; *see also Barrett Bus. Servs., Inc. v. Colmenero*, No. 1:22-CV-3122-TOR, 2023 WL 8935046, at *2 (E.D. Wash. Dec. 27, 2023) (noting, at summary judgment, that a plaintiff asserting trade secret claims under Washington law “must describe the alleged unique, innovative, or novel information with specificity”). A plaintiff’s “fail[ure] to clearly identify the trade secret that it claims

1 [was] misappropriated” means that “no reasonable jury could find that [the plaintiff]
2 owned a trade secret, much less that [the defendant] misappropriated it.” *Workplace*
3 *Techs. Rsch., Inc. v. Project Mgmt. Inst., Inc.*, 664 F. Supp. 3d 1142, 1159 (S.D. Cal.
4 Mar. 28, 2023) (interpreting the DTSA and California’s Uniform Trade Secrets Act); *see*
5 *also IDX Sys. Corp. v. Epic Sys. Corp.*, 285 F.3d 581, 583-84 (7th Cir. 2002) (interpreting
6 the Wisconsin Uniform Trade Secrets Act and affirming grant of summary judgment to
7 defendants because the plaintiff’s trade secret descriptions were not “specific enough”
8 and failed to “separate the trade secrets from [any] other information”).

9 2. Alleged Trade Secret 1

10 Zunum alleged that ATS 1 “comprises certain design requirements and objectives
11 for hybrid-electric aircraft relating to three categories of information: (1) range, speed,
12 payload, and economics; (2) aircraft; and (3) noise and runway.” (Ex. 2000 at 1.)

13 First, Zunum did not sufficiently identify ATS 1 at trial. Mr. Knapp identified a
14 single slide from Exhibit 762 that reflected a “subset” of Zunum’s design requirements
15 and objectives and noted that the remaining information related to ATS 1 “would be in
16 various places in our documents.” (5/17/24 Tr. (Rough) at 103:3-19, 105:24-106:04; *see*
17 Ex. 762, at 3.) Zunum never identified those other documents. Instead, its expert Mr.
18 Tata identified one slide of Exhibit 267 as “describ[ing] what the technical high level
19 specification or requirements are,” including the number of seats and mileage range.
20 (5/22/24 Tr. (Rough) at 33:4-5; Ex. 267, at 16.) After Boeing introduced an article
21 during Mr. Tata’s cross-examination that publicly disclosed many of those design
22 requirements (*see* Ex. A-774), Zunum’s attorney acknowledged outside of the jury’s

1 presence that ATS 1 had “dozens of subparts” the jury was not aware of (5/22/24 Tr.
 2 (Rough) at 64:6-8; *see id.* at 64:8-10 (“We have a misleading impression created that all
 3 he analyzed and rendered his opinion on was seats, length, and that that was all
 4 public.”)). Zunum simply failed to provide the jury with any means of reasonably
 5 determining the metes and bounds of ATS 1. Without knowing the extent of what ATS 1
 6 did or did not encompass, the jury could not have reasonably found that ATS 1 was a
 7 trade secret or that Boeing misappropriated it.

8 Second, Mr. Tata’s conclusory testimony was insufficient to establish that ATS 1
 9 derived value from not being generally known to or readily ascertainable by proper
 10 means by other persons. *See* RCW 19.108.010(4)(a). Mr. Tata testified that, for each of
 11 the alleged trade secrets he reviewed, he concluded that they “were novel, valuable, [and]
 12 kept secret.” (5/22/24 Tr. (Rough) at 32:19-23.) Mr. Tata did not explain how he
 13 reached that conclusion with respect to ATS 1,⁶ nor did he identify what portions of ATS
 14 1 were secret. (*See id.* at 32:24-33:13.) And as Mr. Tata acknowledged during
 15 cross-examination, many of the design requirements he discussed as part of ATS 1 were
 16 disclosed in Zunum’s public marketing materials. (*Id.* at 52:11-56:2 (discussing number
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18 ⁶ Mr. Tata briefly explained his “methodology” for determining whether each alleged
 19 trade secret derived value from its secrecy, using ATS 3 as an example. (5/22/24 Tr. (Rough)
 20 at 21:12-16.) Mr. Tata’s “methodology,” however, is simply the result of his “own experience”
 21 and possibly the result of research he “directed . . . to kind of survey what the industry was using
 22 during the relevant time period.” (*Id.* at 18:1-8.) He also testified that he “looked . . . [at]
 Boeing documentation . . . to understand what the Boeing technical experts thought of the
 novelty of [the alleged trade secrets].” (*Id.* at 19:25-20:3.) Mr. Tata did not, however, explain
 how his experience informed his conclusions with respect to the other alleged trade secrets, what
 his supposed “survey” revealed concerning the technology comprising each alleged trade secret,
 or what “Boeing documentation” supported his conclusions with respect to each alleged trade
 secret.

1 of seats, range and maximum cruise speed, runway information, landing distance, and
2 “numerous other performance figures for the Zunum aircraft concept”).) During redirect,
3 Mr. Tata testified that Zunum’s marketing materials had “no impact whatsoever” on his
4 misappropriation analysis and emphasized that ATS 1 was “the specific technical
5 requirements which [are] used by an engineering organization as their instructions . . . to
6 design an airplane.” (*Id.* at 71:11-19.) Again, however, Mr. Tata never explained what
7 those “specific technical requirements” were or why they derived value from not being
8 generally known to or readily ascertainable by others. (*See id.*)

9 Zunum argues that, under Federal Rule of Evidence 705, its “experts could ‘state
10 [their] opinion—and give the reasons for it—without first testifying to the underlying
11 facts or data.’” (Resp. at 6 (quoting Fed. R. Evid. 705).) The first issue with Zunum’s
12 argument is that its experts failed to “give the reasons for” their opinions concerning
13 whether the alleged trade secrets met the statutory definition of a trade secret. *See* Fed.
14 R. Evid. 705. The second issue is that Rule 705 concerns the “manner of presenting
15 testimony at trial,” not the sufficiency of that testimony to carry a party’s burden of proof
16 on an issue. Fed. R. Evid. 705 advisory committee’s note to 1993 amendment; *see*
17 *United States v. Various Slot Machs. on Guam*, 658 F.2d 697, 700-01 (9th Cir. 1981)
18 (holding that conclusory expert statements were not “in themselves sufficient” under
19 Rule 705 to establish a genuine issue of material fact and noting that “an expert must
20 back up his opinion with specific facts”); *Ambrosini v. Labarraque*, 966 F.2d 1464, 1470
21 (D.C. Cir. 1992) (noting that “the issue of admissibility of an expert’s opinion under
22 Rules 703 and 705 is separate and distinct from the issue whether the testimony is

1 sufficient to withstand a motion for summary judgment under Rule 56”); *see also*
2 *McSherry v. City of Long Beach*, 423 F.3d 1015, 1020 (9th Cir. 2005) (“[T]he standard
3 for granting a motion for summary judgment is identical to that for granting a judgment
4 as a matter of law[.]”). Without citing Evidence Rule 705, other courts have held that
5 “[c]onclusory expert testimony does not qualify as substantial evidence.” *TQ Delta, LLC*
6 *v. Cisco Sys., Inc.*, 942 F.3d 1352, 1358 (Fed. Cir. 2019); *see also Sea Robin Pipeline Co.*
7 *v. Fed. Energy Regul. Comm’n*, 795 F.2d 182, 188 (D.C. Cir. 1986) (“[I]nordinate faith in
8 the conclusory assertions of an expert . . . cannot satisfy the requirement” of “substantial
9 evidence.”). Because Zunum failed to provide any non-conclusory testimony or other
10 evidence that ATS 1 derived value from not being generally known to or readily
11 ascertainable by proper means by other persons, it failed to provide substantial evidence
12 to support the jury’s finding that ATS 1 was a trade secret.

13 In sum, because Zunum failed to properly identify ATS 1 or provide
14 non-conclusory testimony that ATS 1 derived value from not being generally known to or
15 readily ascertainable by proper means by other persons who could obtain economic value
16 from its use, substantial evidence does not support the jury’s verdict with respect to ATS
17 1.

18 3. Alleged Trade Secret 2

19 Zunum alleged that ATS 2 “comprises a compilation of data concerning the
20 components of hybrid-electric aircraft, as well as forecasts from that data. The
21 component data concerns the following: (1) batteries and battery packs; (2) range

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1 extending generators; (3) other hybrid-electric powertrain components; and (4) aircraft.”
2 (Ex. 2000 at 1.)

3 First, Zunum did not sufficiently identify ATS 2 at trial. Similar to what he did for
4 ATS 1, Mr. Knapp identified a single slide of Exhibit 762 that he described as “a good
5 illustration of Trade Secret 2.” (5/17/24 Tr. (Rough) at 116:14-15; Ex. 762 at 36.) It is
6 unclear, however, what aspects of that “illustration”—a slide titled “[w]eight validation
7 by major group”—Zunum claims comprise ATS 2. (*See* Ex. 762 at 36.) It is also unclear
8 what information comprising ATS 2 is missing from that slide. For example, the slide
9 does not discuss range extending generators or other powertrain components. (*See id.*)
10 Moreover, the bottom of the slide lists as its “[s]ource” a book titled “Roskam Airplane
11 Design Vol 1”—indicating the slide contains non-trade secret information from an
12 external source. (*Id.*) Mr. Tata described ATS 2 as “the compilation of important data
13 for key components” but never told the jury what those components are. (5/22/24 Tr.
14 (Rough) at 33:20-22.) He testified that his demonstratives contained “Zunum’s
15 forecasted component data, which was their trade secret” (*id.* at 34:5-6), but those slides
16 only touched on battery data. (*See id.* at 56:12-14, 57:13-15.) Zunum’s counsel later
17 clarified that Mr. Tata’s “battery collection” slide “is not what Trade Secret 2 is.”
18 (5/24/24 Tr. (Rough) at 230:1-5.) Boeing’s argument that Zunum “presented no evidence
19 at all pertaining to the second and third categories of information comprising” ATS 2 in
20 Exhibit 2000 goes unanswered (Mot. at 11. *See generally* Resp.), and it is clear that
21 Zunum failed to inform the jury “what Trade Secret 2 is” during its expert’s direct
22 examination (5/24/24 Tr. at 230:5). Without knowing what ATS 2 did or did not

1 encompass, the jury could not have reasonably found that ATS 2 was a trade secret or
2 that Boeing misappropriated it.

3 Second, Mr. Tata's conclusory testimony was insufficient to establish that ATS 2
4 derived value from not being generally known to or readily ascertainable by proper
5 means by other persons. *See* RCW 19.108.010(4)(a). Mr. Tata's testimony that ATS 2
6 was "novel, valuable, [and] kept secret" falls short of substantial evidence. (5/22/24 Tr.
7 (Rough) at 32:19-20.) Mr. Tata did not explain how he reached that conclusion with
8 respect to ATS 2, nor did he identify what portions of ATS 2 were even secret. (*See id.* at
9 33:18-34:10.) Indeed, Mr. Tata testified that ATS 2 comprised "compilations of public
10 battery data" and that "[s]omebody . . . who has a deep familiarity with batteries . . .
11 could readily ascertain the datasets and the public sources containing the datasets that
12 Zunum compiled." (*Id.* at 57:16-17, 58:24-59:9 (impeaching Mr. Tata with his
13 deposition testimony).) Mr. Tata's testimony is at best conclusory and at worst
14 establishes that ATS 2 was readily ascertainable by those with the requisite skill.

15 Because Zunum failed to properly identify ATS 2 or provide non-conclusory
16 testimony that ATS 2 derived value from not being generally known to or readily
17 ascertainable by proper means by other persons who could obtain economic value from
18 its use, substantial evidence does not support the jury's verdict with respect to ATS 2.

19 4. Alleged Trade Secret 5

20 Zunum alleged that ATS 5 "comprises the design specifications for Zunum's
21 ZA-10 aircraft." (Ex. 2000 at 2.)

22 //

1 First, Zunum did not sufficiently identify ATS 5 at trial. Mr. Knapp identified five
2 slides as “a good example of Trade Secret 5.” (5/17/24 Tr. (Rough) at 116:9-12; *see* Ex.
3 762 at 32-36.) The slides contained information describing “the overall configuration
4 numbers on the TZ10,” “weights by category,” “[s]pecifics on the batteries,” and “a
5 collection of data on other aircraft.” (5/17/24 Tr. (Rough) at 116:25, 117:7, 117:24,
6 118:3.) There is no telling what else ATS 5 encompassed. Mr. Tata testified that ATS 5
7 comprised “a number of key features” but only identified four such features and vaguely
8 noted that “[a] number of criteria are there.” (5/22/24 Tr. (Rough) at 37:2-5.) It is
9 unclear what other “criteria” Mr. Tata was referring to; he testified on cross-examination
10 that “there were around 20 or so but . . . I’m not exactly precise.” (*Id.* at 70:23-71:5.)
11 The jury heard testimony that ATS 5 consists of an unspecified number of “key features”
12 and “criteria,” some of which are located on five slides of an 84-page PowerPoint
13 presentation. (Ex. 762 at 32-36.) That testimony left ATS 5 ambiguous and failed to
14 “convey an understanding of its parameters.” *Workplace*, 664 F. Supp. 3d at 1159.
15 Without understanding ATS 5’s scope, the jury could not have reasonably found that
16 ATS 5 was a trade secret or that Boeing misappropriated it. *See IntelClear*, 978 F.3d at
17 658 (noting that the “trier of fact will not have the requisite expertise to define what the
18 plaintiff leaves abstract”).

19 Second, Mr. Tata’s conclusory testimony was insufficient to establish that ATS 5
20 derived value from not being generally known to or readily ascertainable by proper
21 means by other persons. *See* RCW 19.108.010(4)(a). Mr. Tata’s testimony that ATS 5
22 was “novel, valuable, [and] kept secret” falls short of substantial evidence. (5/22/24 Tr.

(Rough) at 32:19-20.) Mr. Tata did not explain how he reached that conclusion with respect to ATS 5, nor did he identify what portions of ATS 5 were even secret.⁷ (*See id.* at 36:21-38:14; *see also id.* at 52:11-56:2 (identifying aspects of Zunum’s aircraft design in the public domain)); *IDX*, 285 F.3d at 584 (acknowledging that some “details” in the plaintiff’s description “may be genuine trade secrets” but affirming grant of summary judgment to defendants because the plaintiff “ha[d] not tried to separate them from [the non-secret] elements”).

Because Zunum failed to properly identify ATS 5 or provide non-conclusory testimony that ATS 5 derived value from not being generally known to or readily ascertainable by proper means by other persons who could obtain economic value from its use, substantial evidence does not support the jury’s verdict with respect to ATS 5.

5. Alleged Trade Secret 6

Zunum alleged that ATS 6 “comprises insights into the design of hybrid-electric aircraft relating to the following: (1) identification of design space; (2) aircraft and powertrain configuration and sizing; (3) economics and market; and (4) ownership, maintenance, and operating costs.” (Ex. 2000 at 2.)

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⁷ In a footnote, Zunum points the court toward nearly three pages of Mr. Knapp’s testimony during which he purportedly described how Zunum developed ATS 5 and kept the information secret. (Resp. at 5-6 & n.17 (citing 5/17/24 Tr. (Rough) at 116:1-118:24).) That testimony, however, says nothing about whether the information comprising ATS 5 derived value from not being readily ascertainable by others. (*See id.* at 116:1-118:24.) Indeed, in discussing several specifications, such as weight and cargo load, Mr. Knapp testified that “a lot of these are pretty standard.” (*Id.* at 117:1-4.)

1 First, Zunum did not sufficiently identify ATS 6 at trial. Mr. Tata described ATS
2 6 as comprising certain “design insights” and identified “one key take away” concerning
3 an “all fuel” “reserve power scheme.” (5/22/24 Tr. (Rough) at 38:17-39:14.) Although
4 Mr. Knapp did not mention ATS 6 during his testimony, Zunum argues that he
5 “described a number of the Zunum design insights constituting TS6.” (Resp. at 6.)
6 Zunum suggests that the jury was somehow supposed to know that Mr. Knapp was
7 referring to ATS 6 when he testified about “technical viability in early 2020s,” “enter HE
8 market at regional lengths,” “scale independence, ability to design smaller,
9 cost-competitive HE planes,” and “design 10-seat plan[e].” (*Id.* at 6 n.18.) Those bursts
10 of testimony, unattached to ATS 6, fell well short of providing the “precision” the jury
11 “require[d].” *InteliClear*, 978 F.3d at 658. Simply put, Zunum failed to tell the jury what
12 “insights” ATS 6 comprises. Without knowing what those insights were, the jury had no
13 means of reasonably determining whether ATS 6 was a trade secret or whether Boeing
14 misappropriated it.

15 Second, Mr. Tata’s conclusory testimony was insufficient to establish that ATS 6
16 derived value from not being generally known to or readily ascertainable by proper
17 means by other persons. *See* RCW 19.108.010(4)(a). Mr. Tata’s testimony that ATS 6
18 was “novel, valuable, [and] kept secret” falls short of substantial evidence. (5/22/24 Tr.
19 (Rough) at 32:19-20.) Mr. Tata did not explain how he reached that conclusion with
20 respect to ATS 6, nor did he identify what portions of ATS 6 were even secret. (*See id.* at
21 38:17-39:14.) With respect to the one example Mr. Tata gave, he testified that Boeing
22 “didn’t really realize it should be all fuel” because “they thought probably some battery

1 or [hybrid] combination” (*id.* at 39:7-9), but that testimony says nothing about whether
2 others in the industry knew about Zunum’s “all fuel” insight or whether it was readily
3 ascertainable by proper means by others who could obtain economic value from its
4 disclosure or use.

5 Because Zunum failed to properly identify ATS 6 or provide non-conclusory
6 testimony that ATS 6 derived value from not being generally known to or readily
7 ascertainable by proper means by other persons who could obtain economic value from
8 its use, substantial evidence does not support the jury’s verdict with respect to ATS 6.

9 6. Alleged Trade Secret 7

10 Zunum alleged that ATS 7 “comprises a design for a megawatt-class, 540-volt
11 hybrid powertrain targeted at a ten-seat commuter aircraft and scalable to 4 megawatts
12 for a fifty-seat regional aircraft.” (Ex. 2000 at 3.)

13 First, Zunum did not sufficiently identify ATS 7 at trial. Mr. Knapp identified a
14 single slide from Exhibit 648 that he “believe[d] . . . would be best related to Trade Secret
15 7.” (5/17/24 Tr. (Rough) at 188:13-16.) He testified that the slide contained “some very
16 detailed technical information on thermal management systems and electric power
17 distribution on a hybrid-electric aircraft.” (*Id.* at 188:8-10; *see* Ex. 648 at 41.) He further
18 testified that the slide depicted information concerning “an area that was new and
19 innovative.” (5/17/24 Tr. (Rough) at 189:5-6.) Mr. Knapp did not, however, explain
20 how any of the information depicted on that slide related to ATS 7’s powertrain. (*See id.*
21 at 188:5-189:7.) Zunum’s expert Mr. Andrade did not provide the needed clarification.
22 He described ATS 7 as “a megawatt class hybrid powertrain system,” stated that “a

1 megawatt is one million watts,” and left his description at that. (5/22/24 Tr. (Rough) at
2 139:9-11.) Because Zunum failed to provide more than a cursory, surface-level
3 description of ATS 7, the jury had no means of reasonably determining whether ATS 7
4 was a trade secret or that Boeing misappropriated it.

5 Second, Mr. Andrade’s testimony was insufficient to establish that ATS 7 derived
6 value from not being generally known to or readily ascertainable by proper means by
7 other persons. *See* RCW 19.108.010(4)(a). Mr. Andrade testified that ATS 7 was
8 “novel” because he “looked at the companies that were . . . doing[] proof of concept” and
9 “found that there was no one with this class of airplane that intended to actually make it
10 available for commercial use in the early to mid 20s.” (5/22/24 Tr. (Rough) at
11 139:13-140:3.) All that suggests, however, is that others weren’t doing it. Mr. Andrade’s
12 analysis is not probative as to whether ATS 7 was generally known or readily
13 ascertainable. Mr. Andrade further testified that Boeing engineers recognized that
14 Zunum “ha[d] IP in motors” and “powertrain optimization” that Boeing “currently” did
15 not have, but again, that testimony says nothing about whether the information was
16 readily ascertainable. (*Id.* at 141:1-6.) Indeed, Mr. Andrade agreed during
17 cross-examination that “anybody knowledgeable in the art would be able to come up with
18 the idea of designing a one megawatt powertrain that contains components tailored to the
19 FAA’s 540-volt certification,” though not “immediately.” (*Id.* at 159:7-10, 13-14,
20 18-22.) Moreover, Zunum fails to respond to Boeing’s argument that “Zunum disclosed
21 this very information about its powertrain publicly in October 2017.” (Mot. at 17 (citing
22 Ex. A-1225 at 2 (article disclosing that Zunum’s aircraft would use a “1-megawatt-class

1 series hybrid-electric propulsion system with a 500-kW-class turbogenerator”)). *See*
2 *generally* Resp.) Zunum fell well short of providing substantial evidence that ATS 7
3 derived value from not being generally known or readily ascertainable by proper means
4 by others who could obtain economic value from its disclosure or use.

5 Because Zunum failed to properly identify ATS 7 or provide evidence that ATS 7
6 derived value from not being generally known to or readily ascertainable by proper
7 means by other persons who could obtain economic value from its use, substantial
8 evidence does not support the jury’s verdict with respect to ATS 7.

9 7. Alleged Trade Secret 9

10 Zunum alleged that ATS 9 “comprises a hybrid powertrain system controller for a
11 series hybrid powertrain that interfaces to higher-level flight and aircraft management
12 systems and that commands all subsystems of the powertrain.” (Ex. 2000 at 3.)

13 First, Zunum did not sufficiently identify ATS 9 at trial. The sole Zunum witness
14 who discussed ATS 9, Mr. Andrade, identified it as “the hybrid powertrain system
15 controller” and provided “a high level representation” of the “very sophisticated
16 algorithms” needed for the controller to work. (5/22/24 Tr. (Rough) at 148:13-22; *see*
17 Ex. 641 at 60.) In general terms, Mr. Andrade described what a system controller does,
18 but he failed to identify anything unique about Zunum’s hybrid powertrain system
19 controller. (*See* 5/22/24 Tr. (Rough) at 148:13-19.) Without that information, the jury
20 had no means of reasonably determining whether ATS 9 was a trade secret or whether
21 Boeing misappropriated it.

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1 Second, Zunum’s claim of misappropriation of ATS 9 likewise fails because Mr.
2 Andrade’s conclusory testimony was insufficient to establish that ATS 9 derived value
3 from not being generally known to or readily ascertainable by proper means by other
4 persons. *See* RCW 19.108.010(4)(a). Mr. Andrade testified that he applied the “same
5 methodology” from his “analysis” of ATS 7 to “all of the trade secrets” and concluded
6 “as to all of the powertrain trade secrets . . . [t]hat they were novel” and “that they really
7 derived value from being kept secret.” (5/22/24 Tr. (Rough) at 153:21-154:4.) As noted
8 above, however, Mr. Andrade’s “analysis” was not probative of whether Zunum’s alleged
9 trade secrets were readily ascertainable. Moreover, Mr. Andrade failed to explain how he
10 applied that methodology to ATS 9, what about ATS 9 was “novel,” or why ATS 9 was
11 valuable. (*See id.* at 148:11-149:8.) Mr. Andrade’s conclusory assertion that ATS 9
12 “really derived value from being kept secret” is insufficient to sustain the jury’s verdict.
13 (*Id.* at 154:3-4); *see TQ Delta*, 942 F.3d at 1358.

14 Because Zunum failed to properly identify ATS 9 or provide evidence that ATS 9
15 derived value from not being generally known to or readily ascertainable by proper
16 means by other persons who could obtain economic value from its use, substantial
17 evidence does not support the jury’s verdict with respect to ATS 9.

18 8. Alleged Trade Secret 10

19 Zunum alleged that ATS 10 “comprises a motor controller system to power the
20 propulsion motors in a megawatt-scale aircraft. The motor controller system includes a
21 controller and three inverters.” (Ex. 2000 at 4.)

22 //

1 First, Zunum did not sufficiently identify ATS 10 at trial. The sole Zunum witness
2 who discussed ATS 10, Mr. Andrade, identified it as “the motor controller system” and
3 “the various components in there.” (5/22/24 Tr. (Rough) at 151:2-17.) Just as he did for
4 ATS 9, Mr. Andrade described in general terms what a motor controller system does, but
5 he failed to comment on Zunum’s motor controller system or identify the various
6 “components” comprising it. Without that information, the jury had no means of
7 reasonably determining whether ATS 10 was a trade secret or that Boeing
8 misappropriated it.

9 Second, Zunum’s claim of misappropriation of ATS 10 likewise fails because Mr.
10 Andrade’s conclusory testimony was insufficient to establish that ATS 10 derived value
11 from not being generally known to or readily ascertainable by proper means by other
12 persons. *See* RCW 19.108.010(4)(a). Mr. Andrade’s testimony on direct concerning
13 ATS 10’s value and novelty was no different from his testimony concerning ATS 9 and is
14 insufficient for the same reasons. Mr. Andrade’s testimony during cross-examination
15 that Zunum’s motor controller system was “very unique” is likewise conclusory; Mr.
16 Andrade simply failed to tell the jury what about ATS 10 was unique. (5/22/24 Tr.
17 (Rough) at 173:5.) His testimony is therefore insufficient to sustain the jury’s verdict
18 with respect to ATS 10.

19 Because Zunum failed to properly identify ATS 10 or provide evidence that ATS
20 10 derived value from not being generally known to or readily ascertainable by proper
21 means by other persons who could obtain economic value from its use, substantial
22 evidence does not support the jury’s verdict with respect to ATS 10.

1 9. Alleged Trade Secret 11

2 Zunum alleged that ATS 11 “comprises certain sizing and operational
3 requirements for a range extender for a megawatt-class hybrid powertrain.” (Ex. 2000 at
4 4.)

5 First, Zunum did not sufficiently identify ATS 11 at trial. Mr. Knapp described
6 ATS 11 as “a description of all the ways that you could generate power for the
7 hybrid-electric, the generation part of the hybrid powertrain.” (5/17/24 Tr. (Rough) at
8 151:21-23.) The technologies “could be a diesel engine” or “it could also be a fuel set
9 which is producing power from hydrogen.” (*Id.* at 151:24-152:2.) He further testified
10 that ATS 11 was “different than what others were doing” because Zunum was “looking at
11 an airplane that could fly higher [and] fly faster and we settled on realizing that a
12 helicopter turbine was really the best tool for the job.” (*Id.* at 152:8-15.) Mr. Knapp also
13 identified several images on a slide as “relevant to” ATS 11. (*Id.* at 152:24-153:1; *see*
14 Ex. 426, at 26.) He pointed to “a generic picture” of a helicopter turbine, a “picture of the
15 real airplane,” and schematics showing the “powertrain architecture.” (5/17/24 Tr.
16 (Rough) at 153:2-12.) Throughout his testimony, Mr. Knapp did not identify any sizing
17 or operational requirements or explain how Zunum’s proposed range extender differed
18 from a “generic” turbine. (*See id.* at 153:5.)

19 Mr. Andrade’s testimony did not provide the needed clarification. Mr. Andrade
20 identified ATS 11 by its “title,” which he noted “says hybrid powertrain range extender.”
21 (5/22/24 Tr. (Rough) at 151:23-25.) He described ATS 11 as “the way that Zunum
22 developed it and the application of this within the entire system” and noted that the trade

1 secret encompasses “how it’s going to operate,” “how you would actually share power
2 between batteries and the range extender, and what conditions the range extender would
3 work.” (*Id.* at 152:1-7.) Mr. Andrade did not, however, provide any further explanation.
4 The jury heard no testimony explaining how the range extender operated, how power was
5 shared between the batteries and range extender, or the conditions under which the range
6 extender would function. (*See id.*) Because Mr. Knapp and Mr. Andrade failed to
7 identify the sizing and operational requirements comprising ATS 11, the jury had no
8 means of reasonably determining whether ATS 11 was a trade secret or that Boeing
9 misappropriated it.

10 Second, Zunum’s claim of misappropriation of ATS 11 likewise fails because Mr.
11 Andrade’s conclusory testimony was insufficient to establish that ATS 11 derived value
12 from not being generally known to or readily ascertainable by proper means by other
13 persons. *See* RCW 19.108.010(4)(a). Mr. Andrade’s testimony on direct concerning
14 ATS 11’s value and novelty was no different from his testimony concerning ATS 9 and is
15 insufficient for the same reasons. Moreover, Mr. Andrade testified that a “hybrid
16 powertrain range extender” was “not a new concept,” and he failed to identify what, if
17 anything, was “new” about ATS 11. (5/22/24 Tr. (Rough) at 151:24-152:7.) Zunum
18 points the court toward Exhibit 509, but that exhibit is nothing more than a three-page
19 draft of “a common data worksheet,” which the author described as “a first shot,”
20 “high[-]level” overview, describing “the what/when, vs the how from an IP sensitivity
21 standpoint.” (Ex. 509 at 1.) Although Zunum generally refers the court to this exhibit

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1 (Resp. at 5 n.13), it does not cite any particular text therein in support of ATS 11's
2 novelty or value (*see id.*), and the court finds none.

3 Because Zunum failed to properly identify ATS 11 or provide evidence that ATS
4 11 derived value from not being generally known to or readily ascertainable by proper
5 means by other persons who could obtain economic value from its use, substantial
6 evidence does not support the jury's verdict with respect to ATS 11.

7 10. Alleged Trade Secret 12

8 Zunum alleged that ATS 12 "comprises a multi-step method to 'flow down' the
9 overarching requirements for a hybrid-electric aircraft to identify the specific
10 requirements for each of the aircraft's lower-level systems, subsystems, and individual
11 devices." (Ex. 2000 at 4.)

12 First, Zunum did not sufficiently identify ATS 12 at trial. Mr. Knapp described
13 ATS 12 as "a method of flowing down requirements to the component and subcomponent
14 level using full aircraft, full mission simulation and optimization." (5/17/24 Tr. (Rough)
15 at 110:13-15.) He further testified that Zunum "had to develop this method" to address
16 unspecified shortcomings in the prior art because "classical flow down was insufficient to
17 size the components of a hybrid powertrain." (*Id.* at 110:15-20.) Looking at a slide
18 "simulating an airplane in cruise, over a mission of 500 miles[,]. . . a range of speeds,
19 and a range of amount of generation power, and a range of battery sizes," Mr. Knapp
20 testified that Zunum "would use the [flow-down] method to finalize how much battery[,]
21 how much generation within the generation[, and] how much combustion engine power
22 versus how much actual motor generator power." (*Id.* at 111:16-117:4; *see* Ex. 762 at

1 15.) Mr. Knapp did not, however, explain any step of this flow-down method or describe
2 how it differed from “classical” methods. (*See* 5/17/24 Tr. (Rough) at 110:7-112:4.)
3 Zunum’s counsel recognized this, later arguing that Mr. Knapp’s “summary” testimony
4 was “not what Trade Secret 12 is.” (5/24/24 Tr. (Rough) at 230:19-231:6.)

5 Mr. Andrade similarly failed to describe ATS 12 as anything more than “the
6 method for the flow-down requirements.” (5/22/24 Tr. (Rough) at 152:20-21.) He
7 testified that ATS 12 was “how you flow [various] requirements,” but again, failed to
8 explain with any level of precision what Zunum’s method was or how it differed from
9 standard flow-down methods. (*See id.* at 153:5-7.) Without knowing what Zunum’s
10 flow-down method was, the jury had no means of reasonably determining whether ATS
11 12 was a trade secret or that Boeing misappropriated it.

12 Second, Zunum’s claim of misappropriation of ATS 12 likewise fails because Mr.
13 Andrade’s conclusory testimony was insufficient to establish that ATS 12 derived value
14 from not being generally known to or readily ascertainable by proper means by other
15 persons. *See* RCW 19.108.010(4)(a). Mr. Andrade’s testimony on direct concerning
16 ATS 12’s value and novelty was no different from his testimony concerning ATS 9 and is
17 insufficient for the same reasons.

18 Because Zunum failed to properly identify ATS 12 or provide evidence that ATS
19 12 derived value from not being generally known to or readily ascertainable by proper
20 means by other persons who could obtain economic value from its use, substantial
21 evidence does not support the jury’s verdict with respect to ATS 12.

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11. Alleged Trade Secret 13

Zunum alleged that ATS 13 “comprises using the ‘flow-down’ method of [ATS] 12 to obtain the specific requirements for key subsystems and components of the powertrain for Zunum’s ZA-10, 1 megawatt aircraft.” (Ex. 2000 at 4.)

First, ATS 13 requires “using” ATS 12, and, as stated above, substantial evidence does not support the jury’s finding that Boeing misappropriated ATS 12.

Second, Zunum did not sufficiently identify ATS 13 at trial. The sole Zunum witness who discussed ATS 13, Mr. Andrade, identified it as “a set of those requirements that the engineers will work on to be able to design the airplane.” (5/22/24 Tr. (Rough) at 153:8-9.) Neither Mr. Andrade nor any other Zunum witness explained what those “requirements” are. (*See id.*) Notably, Zunum does not dispute that this “single sentence” is the “sole evidence Zunum offered” with respect to ATS 13. (Mot. at 32. *See generally* Resp.) The court was unable to locate any additional testimony from Mr. Knapp or Zunum’s other witnesses concerning ATS 13. With no understanding of what ATS 13’s “requirements” were, the jury had no means of reasonably determining whether ATS 13 was a trade secret or that Boeing misappropriated it.

Third, Zunum’s claim of misappropriation of ATS 13 fails because Mr. Andrade’s conclusory testimony was insufficient to establish that ATS 13 derived value from not being generally known to or readily ascertainable by proper means by other persons. *See* RCW 19.108.010(4)(a). Mr. Andrade’s testimony on direct concerning ATS 13’s value and novelty was no different from his testimony concerning ATS 9 and is insufficient for the same reasons.

1 Because Zunum failed to provide substantial evidence supporting its claim that
2 Boeing misappropriated ATS 12, properly identify ATS 13, or provide evidence that ATS
3 13 derived value from not being generally known to or readily ascertainable by proper
4 means by other persons who could obtain economic value from its use, substantial
5 evidence does not support the jury's verdict with respect to ATS 13.

6 12. Alleged Trade Secret 19

7 Zunum alleged that ATS 19 "comprises a hybrid-electric aircraft and hybrid
8 powertrain development and production plan for market entry in the 2020s." (Ex. 2000 at
9 6.)

10 First, Zunum did not sufficiently identify ATS 19 at trial. Using one slide from an
11 exhibit, Mr. Knapp described "part of the commercialization plan, meaning a sequence, a
12 timeline, and additional parts of the commercialization plan[,] . . . for example, costs, or
13 estimated costs." (5/17/24 Tr. (Rough) at 140:3-8; *see* Ex. 262 at 8.) He acknowledged
14 that the slide was "an overview" and that Zunum's commercialization plan "went into
15 much, much greater levels of detail from here." (5/17/24 Tr. (Rough) at 140:6-8.) Mr.
16 Knapp identified one additional slide from a separate exhibit, which he testified "relate[d]
17 to" Zunum's commercialization plan and "show[ed] we had a very concrete plan down to
18 the details of which prototype would be assembled when we had matching budgets to go
19 with it." (*Id.* at 185:21-186:9; *see* Ex. 648 at 39.) Mr. Knapp did not explain what else
20 ATS 19 encompassed (*see* 5/17/24 Tr. (Rough) at 185:21-186:9), despite testifying
21 earlier that ATS 19 comprised a "comprehensive full stack integrated schedule" (*id.* at
22 140:23-24). Zunum's expert Mr. Garvett failed to provide the additional details. Mr.

1 Garvett identified ATS 19 simply as the “commercialization plan” or “business plan” to
2 “help ensure dealing with new types of aircraft technology, achieving them on a timely
3 basis and also achieving them in a viable cost.” (5/24/24 Tr. (Rough) at 36:3-8.)
4 Without understanding ATS 19’s scope, the jury could not have reasonably found that
5 ATS 19 was a trade secret or that Boeing misappropriated it.

6 Second, Zunum’s claim of misappropriation of ATS 19 likewise fails because Mr.
7 Garvett’s and Mr. Knapp’s testimony was insufficient to establish that ATS 19 derived
8 value from not being generally known to or readily ascertainable by proper means by
9 other persons. *See* RCW 19.108.010(4)(a). Mr. Garvett testified that ATS 19 embraced
10 an approach that was “different from the past, because in the past, airframe manufacturers
11 never had engine development occurring at the same time.” (5/24/24 Tr. (Rough) at
12 49:22-24.) Mr. Garvett makes the same mistake as Mr. Andrade—a trade secret must do
13 more than simply differ from the prior art; it must derive value from not being generally
14 known to or readily ascertainable by others. *See* RCW 19.108.010(4)(a). Mr. Garvett
15 failed to explain why ATS 19 was not generally known or readily ascertainable. (*See*
16 5/24/24 Tr. (Rough) at 49:18-50:5.) Moreover, Mr. Garvett’s conclusory testimony that
17 he found Zunum’s commercialization plan to be “fast, rapid, [and] resulting in lower
18 costs” is insufficient to establish that ATS 19 was valuable. (*Id.* at 49:25-50:1.)

19 Mr. Knapp’s testimony cannot save ATS 19. Mr. Knapp testified that certain
20 “components and subsets” of Zunum’s commercialization plan were confidential while
21 acknowledging that other aspects of the timeline, such as Zunum’s 2022 aircraft target
22 date, were public. (5/17/24 Tr. (Rough) at 141:5-9.) Neither Mr. Knapp nor Mr. Garvett,

1 | however, ever explained what those confidential “components and subsets” were or why
2 | they were not readily ascertainable.

3 | Because Zunum failed to properly identify ATS 19 or provide evidence that ATS
4 | 19 derived value from not being generally known to or readily ascertainable by proper
5 | means by other persons who could obtain economic value from its use, substantial
6 | evidence does not support the jury’s verdict with respect to ATS 19.

7 | In sum, Zunum’s trade secret misappropriation claim fails as a matter of law for
8 | two independent reasons. First, Zunum failed to tell the jury what its trade secrets were.
9 | The jury “require[d] precision,” and Zunum did not provide it. *See InteliClear*, 978 F.3d
10 | at 658. Zunum argues that it “was not required to recite its pleadings and claims to the
11 | jury in lengthy dissertations” (Resp. at 11), but that is a straw man. Clarity does not
12 | require a tome. It does, however, require the plaintiff to take the time to “separate [its]
13 | trade secrets from the other information” known to or ascertainable by the industry. *IDX*,
14 | 285 F.3d at 584. Having offered only vague and amorphous descriptions of its alleged
15 | trade secrets throughout trial, Zunum fell well short providing the “specific, concrete
16 | examples” the jury needed to determine whether the alleged trade secrets were in fact
17 | trade secrets. *Belo*, 343 P.3d at 375.

18 | Second, Zunum failed to offer more than conclusory testimony that its alleged
19 | trade secrets met the statutory definition of a trade secret. The court rejects Zunum’s
20 | argument that Rule 705 somehow transforms conclusory expert testimony into substantial
21 | evidence. Having offered nothing but bare, conclusory assertions that the alleged trade
22 | secrets derived value from not being generally known to or readily ascertainable by

1 others, Zunum failed to provide substantial evidence that any of the alleged trade secrets
2 were in fact trade secrets.

3 Accordingly, the court GRANTS Boeing's motion for judgment as a matter of law
4 on Zunum's claim for trade secret misappropriation under the WUTSA. This claim is
5 DISMISSED with prejudice.

6 **C. Breach of Contract**

7 The court next considers whether Boeing is entitled to judgment as a matter of law
8 on Zunum's claim for breach of the 2017 IRL. Boeing argues that substantial evidence
9 does not support the jury's finding of breach of the 2017 IRL because Zunum failed to
10 establish that (1) it disclosed information to Boeing that was protected under the 2017
11 IRL; (2) Boeing's use of any information was unauthorized under the 2017 IRL; or (3)
12 that Boeing's alleged breach harmed Zunum. (Mot. at 35-38.) Zunum counters that
13 substantial evidence supports a finding that Boeing made extensive use of confidential
14 information in violation of the 2017 IRL and that Boeing's breach of contract harmed
15 Zunum. (Resp. at 40-42.) Although the court concludes that substantial evidence
16 supports a finding that Zunum shared confidential information governed by the 2017 IRL
17 with Boeing, the court agrees with Boeing that Zunum failed to provide substantial
18 evidence that its use of any such information was unauthorized or that Boeing's alleged
19 breach injured Zunum.

20 1. Breach of Contract Standard

21 "[P]laintiffs must establish the following three elements to succeed on a breach of
22 contract claim: (1) the existence of a contract, whether express or implied; (2) breach of

one or more of the contract’s obligations; and (3) damages resulting from the breach.” *Geico Gen. Ins. Co. v. Green*, 308 A.3d 132, 140 (Del. 2022).⁸ To satisfy the third element, the plaintiff “must demonstrate with reasonable certainty that defendant’s breach caused the loss.” *LaPoint v. AmerisourceBergen Corp.*, No. Civ.A. 327-CC, 2007 WL 1309398, at *7 (Del. Ch. May 1, 2007) (quoting *Tanner v. Exxon Corp.*, No. 79C-JA-5, 1981 WL 191389, at *1 (Del. Super. Ct. July 23, 1981)). In other words, the plaintiff must “tak[e] the causation of damages out of the area of speculation.” *Id.*

2. Disclosure of Confidential Information

Boeing argues that substantial evidence does not support a finding Zunum sent it information protected under the 2017 IRL for two reasons: (1) the alleged trade secrets “are the only information Zunum claimed Boeing misused to breach” the 2017 IRL and, “[a]t trial, Zunum identified only two slides relating to the ATSS it disclosed under the [2017] IRL”; and (2) even if the court considers information unrelated to the alleged trade secrets, “no evidence shows that this other ‘information’ was confidential.” (Reply at 18-19.) Zunum responds that (1) “Boeing’s challenge to the trade-secret verdict” has “no bearing on the IRL verdict”; and (2) “[t]he evidence of Boeing’s access to [confidential] IRL information was plentiful, not limited to ‘just two slides.’” (Resp. at 15, 41.) The court considers the parties’ arguments below.

As an initial matter, the court agrees with Zunum that Boeing could have breached the 2017 IRL even if it did not misappropriate the alleged trade secrets. (*See* 4/22/24

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⁸ Delaware law governs the 2017 IRL. (Ex. 402 at 5.)

Order at 18 (“Boeing could have breached [the IRL] even if the jury finds that the Alleged Trade Secrets are not in fact secrets.” (citing *Rent Info. Tech., Inc. v. Home Depot U.S.A., Inc.*, 268 F. App’x 555, 557-58 (9th Cir. 2008))).⁹ The court must next determine whether Zunum presented substantial evidence at trial that it shared confidential information with Boeing.

Substantial evidence supports a finding that Zunum shared with Boeing information that was confidential under the 2017 IRL, even if that information did not comprise trade secrets. (*See Resp. at 15-18.*) For example, Mr. Knapp testified that “[o]ne of the main ways” Zunum shared its proprietary information with Boeing was through quarterly board meetings, which Boeing employee Logan Jones attended. (5/17/24 Tr. (Rough) at 136:17-137:4, 22-23.) Other examples concern technical information Zunum shared with Pradeep Fernandes at Boeing. (*See generally Ex. A-1532; A-1755. See 5/20/24 Tr. (Rough) at 243:2-245:5 (discussing Mr. Fernandes’s role as technical advisor to Zunum and Boeing’s receipt of Zunum intellectual property).*)

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⁹ Boeing cites two exhibits in support of its argument that Zunum’s breach of contract claim “was co-extensive with its misappropriation claim.” (Mot. at 33.) The first exhibit is the transcript of the March 25, 2024 *Daubert* hearing, during which Zunum’s counsel stated that “the breach of contract is the ‘mis’ in misuse.” (6/13/24 Fursevich Decl. (Dkt. # 696) ¶ 9, Ex. H at 72:16-17.) The second exhibit is a January 18, 2024 email from Zunum’s counsel to Boeing’s counsel, in which Zunum’s counsel represented that “Zunum limits its claims concerning use of information in violation of the parties’ contracts to the universe of information described as constituting Zunum’s Trade Secrets.” (2/29/24 Fursevich Decl. (Dkt. # 363) ¶ 91.) The court does not interpret these exhibits to mean that Zunum agreed to relinquish its breach of contract claims if it failed to prevail on its trade secret misappropriation claim. Regardless, these exhibits predate the April 22, 2024 summary judgment order cited above, meaning Boeing’s assertion that this “new breach theory” was “unknown” to Boeing at the time of trial is incorrect. (Reply at 20 n.12.)

1 Thus, Zunum established by substantial evidence that it shared confidential information
2 with Boeing under the 2017 IRL.

3 3. Unauthorized Use of Information

4 Next, Boeing argues that “Zunum failed to establish that Boeing used the
5 information for a non-permitted purpose.” (Mot. at 37 (capitalization altered).) Zunum
6 argues substantial evidence demonstrates that Boeing made unauthorized use of Zunum’s
7 information through various programs or ventures associated with Boeing: the alleged
8 CAPE assessment (“CAPE”), Thin Haul Study, Electric Lab, and Electra startup. (Resp.
9 at 18-23.) The court considers each in turn.

10 *i. CAPE*

11 Zunum argues that substantial evidence supports a finding that Boeing, through
12 CAPE, “engage[d] in industrial espionage and hostile competitive intelligence.” (*Id.* at
13 18.) Zunum makes three arguments in support of this theory: (1) the CAPE team, led by
14 Kevin Gosling, “discussed Zunum ‘Data Acquisition’” two weeks before Boeing
15 conducted a December 12, 2017 “competitive assessment” of Zunum; (2) Dr. Kamiar
16 Karimi “invited Gosling . . . to the [December 12] meeting”; and (3) the “CAPE deck
17 itself says” that “Boeing used IRL information learned” during the [December 12]
18 meeting for its “competitive assessment.” (*Id.*) Boeing responds that Zunum dismisses
19 key “evidentiary gaps” and that its arguments are based on speculation. (Reply at 8.)
20 The court agrees with Boeing.

21 First, the only evidence Zunum cites regarding improper “data acquisition” is a
22 single slide with the words “data acquisition” on it. (*See* Ex. 455 at 35. *See generally*

1 Resp.) There is no basis to conclude that this slide was referring to acquisition of data
2 from Zunum, let alone the acquisition of information disclosed under the 2017 IRL.
3 Moreover, Zunum fails to provide any evidence that Mr. Gosling actually acquired any
4 information from Zunum, which makes Zunum's cited case distinguishable. *See Brocade*
5 *Commc 'ns Sys., Inc. v. A10 Networks, Inc.*, 873 F. Supp. 2d 1192, 1216 (N.D. Cal. 2012)
6 (describing findings of a "forensic expert" who determined that defendants used their
7 computers "to access and copy [the plaintiff's] source code files" and "deleted related
8 files [including over 54,000 source code files] in a manner consistent with an effort to
9 cover their tracks").

10 Second, Zunum cites a message from Hubert Wong saying that he thought it was
11 not "a good idea" to have Mr. Gosling attend the December 12, 2017 meeting (*see* Ex.
12 404; Resp. at 18), but Zunum cites no evidence showing that Mr. Gosling actually
13 attended that meeting, received any information shared under the 2017 IRL, or made
14 unauthorized use of any Zunum information (*see generally* Resp.).

15 Third, Zunum misrepresents the "CAPE deck" evidence. The slides to which
16 Zunum directs the court do not "say[]" that Boeing used information protected under the
17 2017 IRL in a "competitive assessment" of Zunum. (*Id.* at 18; *see* Ex. 455 at 32-39.)
18 Nor could they; the presentation is dated January 8th, 2017 (Ex. 455 at 32), two months
19 before Zunum and Boeing executed the 2017 IRL. Regardless, the only mention of a
20 "competitive assessment" during trial occurred when Zunum solicited testimony from

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1 Hubert Wong about what the first two letters in the CAPE acronym stood for.¹⁰ (*See*
2 5/22/24 Tr. (Rough) at 127:3-4.) The slide deck at issue is titled “Unconventional
3 Aircraft Evaluation: Zunum and Airbus Electric, Hybrid-Electric and Autonomous Air
4 Vehicle *Assessments and Claims Evaluation*.” (Ex. 455 at 32 (emphasis added).) The
5 slides do not mention a “*competitive* assessment.” (*See id.* at 32-39.) The slide deck
6 refers to “Data sharing/Eval,” “Zunum Claims,” and “Methods, Processes and Tools.”
7 (*Id.* at 33, 35.) None of the emails attached to Exhibit 455 mention a “competitive
8 assessment” of Zunum, either. (*See generally id.*) Rather, an email from Mr. Gosling
9 explains that “[w]e’ve been asked to help evaluate the Zunum hybrid-electric airplane
10 concept” and “need to understand what Boeing collectively has in the way of an airplane
11 definition to form the basis of the evaluation.” (*Id.* at 3.) Evidence that Boeing was
12 assessing Zunum’s claims is a far cry from evidence that Boeing conducted a competitive
13 assessment akin to “industrial espionage.” (Resp. at 18.)

14 Simply put, Zunum fails to cite evidence creating a non-speculative inference that
15 Boeing improperly used any information disclosed under the 2017 IRL in an alleged
16 “competitive assessment” of Zunum. Substantial evidence does not support Zunum’s
17 convoluted theory that Mr. Gosling, operating under the guise of evaluating Zunum’s
18 claims, actually gathered information protected under the 2017 IRL to form a competitive
19 assessment of Zunum.

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22 ¹⁰ The court is still unsure what the “PE” in CAPE stands for.

1 ii. *Thin Haul Study*

2 Zunum argues that “ample evidence” supports a finding that Boeing
3 misappropriated information governed by the 2017 IRL while conducting its Thin Haul
4 Study. (Resp. at 20-22.) Boeing denies that Zunum presented any evidence that Boeing
5 misused Zunum’s confidential information during the Thin Haul Study. (*See* Reply at 9.)
6 The court agrees with Boeing.

7 Zunum’s first bit of “ample evidence” is the spreadsheet attached to Exhibit
8 A-1258, specifically Kevin Lutke’s and Marty Bradley’s comments, which Zunum argues
9 “reflect an intent to use Zunum’s information for continued R&D.” (Resp. at 20.)
10 Zunum mischaracterizes the evidence, stripping necessary context and omitting
11 inconvenient portions. Zunum argues that Mr. Bradley suggested “us[ing] Zunum’s
12 ‘white paper / memo’ to ‘convince [Boeing’s] propulsion & maintenance SME’s that
13 there is an opportunity in engine and aircraft maintenance.” (Resp. at 21 (citing Ex.
14 A-1258).) That is not what Mr. Bradley wrote. Mr. Bradley wrote that Boeing “need[s] a
15 story to convince our propulsion & maintenance SME’s that there is an opportunity in
16 engine and aircraft maintenance that is not just cycle based” and that “Zunum ***could give***
17 ***us that story*** in a white paper / memo.” (Ex. A-1258 (emphasis added).) Zunum
18 provided no evidence that Boeing ever asked for or received that white paper or memo.
19 (*See generally* Resp. (citing two unrelated white papers from months prior to Mr.
20 Bradley’s comment).) Zunum likewise removes critical context from Mr. Lutke’s
21 comments. For example, Zunum says that Mr. Lutke recommended performing “a ‘side
22 by side’ analysis to Zunum data” to improve Boeing’s plane. (*Id.* at 20 (citing Ex.

1 A-1258).) Zunum ignores Mr. Lutke’s comment that this “side by side” was related to
2 “the need to do a secondary power and thermal analysis” not because Zunum’s design
3 was better than Boeing’s but rather because “[i]t was not clear that [Zunum] had properly
4 accounted for secondary power extraction . . . and thermal management in their design,”
5 and Boeing’s team had a concern that Zunum’s design “[s]eemed too small” in
6 comparison to Boeing’s “[r]obust” design. (Ex. A-1258.) Zunum’s final example is Mr.
7 Lutke’s comment that Boeing should “look at the Embraer Phenom 100/300 for
8 maintenance costs” because that “seems to be what Zunum is basing theirs on” (Resp. at
9 21 (quoting Ex. A-1258)), but the Embraer Phenom is a *different jet* manufactured by a
10 *different company* that Boeing had previously “partnered” with. (Ex. A-1258.) Notably,
11 Mr. Lutke did not recommend looking at Zunum’s analysis of the Embraer Phenom but
12 rather the jet itself. Zunum also ignores portions of the spreadsheet suggesting that
13 Boeing lacked confidence in Zunum’s maintenance costs, describing Zunum’s “engine
14 maintenance” as “based on very aggressive technology assumptions.” (*Id.*; *see also id.*
15 (noting, with respect to airframe maintenance, that Boeing “can probably do better (but
16 not related to hybrid/electric)”).) None of these comments support an inference that
17 Boeing misappropriated information governed by the 2017 IRL to improve its
18 competitive position.

19 Zunum next argues that its co-founders “explained that when they received these
20 comments . . . they inferred that Boeing was using information shared at that meeting to
21 support Boeing’s development efforts.” (Resp. at 21.) Mr. Kumar’s testimony, however,
22 is entirely conclusory, noting that the comments in the spreadsheet led him to assume that

1 “a major goal of [Boeing’s] workshop . . . was to take insights from our program and put
2 that into Boeing’s hybrid activities.” (5/23/24 Tr. (Rough) at 40:24-41:1.) Mr. Kumar
3 did not specifically identify any comments that supported his characterization of the
4 exhibit. (*See id.*) The only comment Mr. Knapp pointed to is Mr. Lutke’s comment
5 concerning “maintenance costs,” testifying that Boeing wanted to see “what Zunum is
6 using” without informing the jury that Zunum’s “benchmark” was an aircraft that Zunum
7 had nothing to do with. (5/17/24 Tr. (Rough) at 162:10-16.)

8 Simply put, Zunum fails to cite any evidence creating a non-speculative inference
9 that Boeing improperly used any information protected under the 2017 IRL during the
10 Thin Haul Study. The court therefore concludes Zunum failed to provide substantial
11 evidence at trial to support a finding that Boeing’s Thin Haul Study involved misuse of
12 confidential information disclosed under the 2017 IRL.

13 *iii. Electric Lab*

14 Zunum argues that substantial evidence supports a finding that Boeing misused
15 IRL-governed information in the “E-Lab” for five reasons: (1) Boeing needed to catch
16 up with its HE competitors; (2) Mr. Andrade “testified that there was evidence of use in
17 E-Lab”; (3) Zunum provided additional evidence of Boeing’s “access” to Zunum
18 confidential information; (4) Dr. Karimi “admitted to proposing to partner with Safran
19 and others on programs and products that the jury could find similar to Zunum’s”; and
20 (5) Boeing kept the electric lab “a secret from Zunum” because “it was meant to benefit
21 only Boeing.” (Resp. at 19-20.) The court considers Zunum’s arguments in turn.

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1 Zunum’s first argument establishes a motive for Boeing to want to use Zunum’s
2 technology in the electric lab. Boeing does not respond to this argument (*see generally*
3 Reply), and the court agrees that Zunum introduced substantial evidence that Boeing was
4 at one point “behind” its competitors and seeking to “catch up” (Ex. 42 at 4). Zunum’s
5 issue, however, is connecting Boeing’s desire to improve its position in the field with any
6 misuse of information disclosed under the 2017 IRL.

7 Mr. Andrade, the subject of Zunum’s second argument, failed to provide the
8 evidence needed to make that connection. Mr. Andrade testified that Boeing applied
9 knowledge it gained from Zunum “to enhance the capability of [the Electric] lab.”
10 (5/22/24 Tr. (Rough) at 181:5-7.) That testimony, however, was entirely conclusory.
11 Mr. Andrade testified that “there are many things that you have to do” to “upgrade” a lab
12 “to account for [the] much higher power” utilized in electric aircraft, but he never
13 identified what information, let alone information protected under the 2017 IRL, Boeing
14 used to “enhance” its Electric Lab or, if it did, what enhanced capabilities Boeing
15 implemented using proprietary Zunum information. (*See id.* at 180:4-12.) The only
16 “evidence of use” Zunum cites in Mr. Andrade’s testimony (Resp. at 19) concerns a
17 “battery roadmap,” but Mr. Andrade did not explain whether this roadmap was
18 confidential or what, if any, aspects of it Boeing purportedly used. (*See* 5/22/24 Tr.
19 (Rough) at 144:5-16.) Instead, Mr. Andrade merely testified that “sharing your
20 roadmap[] helps whoever is enhancing the lab.” (*Id.* at 144:14-16.) Mr. Andrade’s
21 generalized testimony is distinguishable from the evidence discussed in Zunum’s cited
22 case, in which the plaintiff presented specific evidence “detailing changes to . . . products

1 after” the alleged disclosure of trade secrets. *UniRAM Tech., Inc. v. Taiwan*
2 *Semiconductor Mfg. Co.*, 617 F. Supp. 2d 938, 944 (N.D. Cal. Sept. 5, 2007).

3 Zunum’s third argument rests upon “further evidence of ‘access,’” primarily the
4 fact that “Karimi staffed his E-Lab team with engineers who worked on Thin Haul.”
5 (Resp. at 19.) This argument, however, says nothing about the confidential information
6 Boeing engineers allegedly took from the Thin Haul Study and incorporated into the
7 Electric Lab. Regardless, as noted above, Zunum failed to provide substantial evidence
8 that Boeing’s engineers misappropriated Zunum’s confidential information during the
9 Thin Haul Study.

10 Zunum’s fourth argument, that “Karimi admitted to proposing to partner with
11 Safran and others on programs and products that the jury could find similar to Zunum’s,”
12 fails because Zunum provided no evidence of similarities between its confidential
13 information and any of Boeing’s supposed “programs” or “products.” (Resp. at 20.) The
14 only evidence of any such product or program concerns a 500 kilowatt motor Boeing
15 purchased from Safran (5/22/24 Tr. (Rough) at 198:21-23), but Zunum’s expert testified
16 that such a motor was “sanctioned by the FAA” and “nothing unique.” (*Id.* at 139:19-23,
17 158:14.) Indeed, Zunum ***publicly disclosed*** that its aircraft would have “a 1-megawatt-
18 class series hybrid-electric propulsion system with a 500-kW-class turbogenerator.” (Ex.
19 A-1225 at 2.)

20 Finally, Zunum points out that “Boeing kept the E-Lab a secret from Zunum,” but
21 this argument says nothing about whether Boeing actually used Zunum’s information in
22 the E-Lab, let alone whether such use was in violation of the 2017 IRL. (Resp. at 20.)

1 Zunum has therefore failed to provide substantial evidence creating a non-speculative
2 inference that Boeing breached the 2017 IRL by using Zunum’s confidential information
3 in the Electric Lab.

4 *iv. Electra*

5 Zunum argues that substantial evidence supports a finding that “Boeing used IRL
6 information to seed what was planned to be a new joint venture involving Boeing, which
7 later became Electra.aero.” (*Id.* at 22.) Boeing responds that Zunum fails to provide
8 evidence that Boeing misused Zunum’s intellectual property in connection with Electra.
9 The court agrees with Boeing.

10 Zunum’s circumstantial evidence of Boeing’s use of its confidential information
11 fails to create more than a speculative inference that such use occurred. Once again,
12 Zunum takes evidence out of context to support its argument. For example, Zunum
13 argues that Steve Nordlund “proposed that the new venture ‘[i]nvestigate Zunum IP’” and
14 that “[t]he jury could infer that Boeing and Electra did what they said they were planning
15 to do.” (*Id.* at 22 (citing Ex. 957 at 5).) Zunum fails to mention that this “investigation”
16 was part of a future “Timeline” that first required Boeing and Electra to sign a
17 memorandum of understanding (“MOU”) (Ex. 957 at 5), and unrefuted evidence
18 established that Boeing and Electra never signed an MOU and that Boeing did not end up
19 investing in Electra (5/23/24 Tr. (Rough) at 239:12-17). Zunum next points out that
20 Electra’s founder asked for “[f]ull indemnification . . . against any claims from Zunum”
21 in a redline (Resp. at 22 (quoting Ex. 2200 at 4)), but again, Boeing never agreed to that
22 request, and it says nothing about whether Boeing actually shared Zunum’s information

1 with Electra. Zunum points to another slide indicating that Electra was “buil[t] on
2 excellent work,” but it does not identify any such “work” that was related to or derived
3 from information that was confidential under the 2017 IRL. (*See id.* at 23 (quoting Ex.
4 957 at 3).)

5 Because Zunum failed to create more than a speculative inference that Boeing
6 improperly disclosed to Electra confidential information that was governed by the 2017
7 IRL, Zunum’s claim that Boeing breached the 2017 IRL in this manner fails.

8 4. Harm to Zunum

9 Zunum’s breach of contract claim likewise fails because Zunum did not provide
10 substantial evidence of any harm resulting from Boeing’s alleged breach. Zunum argues
11 that “[t]he evidence was sufficient to support the jury’s finding that Boeing’s IRL
12 breaches caused the destruction of Zunum’s business.” (*Id.* at 42.) According to Zunum,
13 the evidence shows that Boeing (1) “advanced competing programs (using Zunum’s
14 information) to engine majors such as Safran,” which (2) caused “confusion” at Safran,
15 which (3) caused Safran to abandon its prospective \$5 million investment in Zunum,
16 which (4) caused the destruction of Zunum’s entire company, resulting in over \$67
17 million in damages owed to Zunum by Boeing. (*Id.*) This theory rests on a series of
18 preposterous logical inferences rather than fact or evidence, and it is so groundless and
19 conjectural that it must be rejected.

20 To begin, Zunum’s argument that “Boeing personnel . . . **confirmed** Boeing
21 advanced competing programs (***using Zunum’s information***) to engine majors such as
22 Safran” mischaracterizes the evidence. (*Id.* (emphasis added).) None of the testimony

1 Zunum cites from its co-founder says anything about whether Boeing personnel
2 “confirmed” that Boeing was “using Zunum’s information” to advance a competing
3 program with Safran, let alone whether that information was protected under the 2017
4 IRL. (*See* 5/23/24 Tr. (Rough) at 23:12-24:3, 31:13-19.)

5 Zunum’s next argument, that Dr. Karimi “scheduled meetings with Safran to
6 discuss ‘Hybrid and All Electric airplanes’ the same day as Safran met with Zunum”
7 (Resp. at 42 (citing Ex. 399)), likewise says nothing about whether Boeing was
8 advancing competing programs to Safran *using information protected under the 2017*
9 *IRL*. (*See* 5/17/24 Tr. (Rough) at 147:1-5 (Zunum’s co-founder noting that Boeing was
10 “allowed” “to compete in this space”).) Zunum argues that the timing of this meeting
11 suggests something nefarious, but Zunum ignores the portion of Exhibit 399 mentioning
12 that Boeing and Safran had several “existing projects” to discuss, all of which were
13 unrelated to Zunum. (Ex. 399 at 1. *See generally* Resp.)

14 Zunum’s third argument, that Dr. Karimi “asked Safran to ‘build a 500 kilowatt
15 motor for [the] electric lab,” fails for the same reasons—Zunum does not explain how
16 Boeing misused confidential information governed by the 2017 IRL. (Resp. at 42
17 (quoting 5/22/24 Tr. (Rough) at 198:21-23).) Moreover, as discussed, above, there was
18 nothing confidential about the idea of a 500 kilowatt motor.

19 Zunum’s fourth and fifth arguments fare no better because they, again, fail to
20 connect any of Boeing’s interactions with Safran to information protected under the 2017
21 IRL. (*See id.*) Zunum calls attention to “Boeing internal documents indicat[ing] that the
22 Safran-Zunum investment was ‘unlikely to close . . . due to concerns that its investment

1 would be seen as a negative to Boeing” (*id.* (quoting Ex. 613)), but there remains a
2 significant, unexplained gap separating Safran’s decision not to pursue a deal with
3 Zunum and Boeing’s alleged misuse of information protected under the 2017 IRL.
4 Zunum’s final argument, that its co-founder “attributed Zunum’s failure to Boeing’s
5 misuse of Zunum’s information to ‘running off’ with Zunum potential partners and
6 investors” (*id.* (quoting 5/23/24 Tr. (Rough) at 24:1-3)), is both vague and conclusory—
7 failing to identify the particular information with which Boeing allegedly “ran off.”
8 What little evidence Zunum cites fails to create more than a speculative inference of
9 harm.

10 In sum, Zunum failed to provide substantial evidence at trial to support a finding
11 that Boeing breached the 2017 IRL or that Zunum suffered harm as a result of any such
12 breach. The court therefore GRANTS Boeing’s motion for judgment as a matter of law
13 on Zunum’s claim for breach of the 2017 IRL. This claim is DISMISSED with
14 prejudice.

15 **D. Tortious Interference**

16 Finally, the court considers Boeing’s argument in favor of judgment as a matter of
17 law on Zunum’s claim for tortious interference with a business expectancy. Boeing
18 argues that substantial evidence does not support the jury’s verdict because Zunum failed
19 to establish that (1) a valid business expectancy existed, (2) Boeing intentionally
20 interfered, (3) any alleged interference was by improper means or motivated by an
21 improper purpose, and (4) Boeing proximately harmed Zunum. (Mot. at 39-45.) Zunum
22 counters that substantial evidence supports each element of its claim for tortious

interference. (*See Resp. at 43-48.*) The court agrees with Boeing that Zunum failed to provide substantial evidence that Zunum had a valid business expectancy with Safran and therefore does not consider Boeing's remaining arguments.

1. Tortious Interference Standard

To succeed on a claim for tortious interference with a business expectancy, a plaintiff must establish:

(1) the existence of a valid contractual relationship or business expectancy; (2) that defendants had knowledge of that relationship; (3) an intentional interference inducing or causing a breach or termination of the relationship or expectancy; (4) that defendants interfered for an improper purpose or used improper means; and (5) resultant damage.

Leingang v. Pierce Cnty. Med. Bureau, Inc., 930 P.2d 288, 300 (Wash. 1997).

2. Valid Business Expectancy

The court agrees with Boeing that Zunum failed to provide substantial evidence of a reasonable expectancy of a Safran investment.

To establish a valid business expectancy, the plaintiff must show that there was a "prospective contractual or business relationship that would be of pecuniary value," *Newton Ins. Agency & Brokerage v. Caledonian Ins. Grp., Inc.*, 52 P.3d 30, 33 (Wash. Ct. App. 2002), and that the prospective relationship had "a reasonable expectancy of fruition," *Scymanski v. Dufault*, 491 P.2d 1050, 1055 (Wash. 1971) (quoting *F. D. Hill & Co. v. Wallerich*, 407 P.2d 956, 960 (Wash. 1965)). An expectation "based on merely wishful thinking" is not reasonable. *Sea-Pac Co. v. United Food & Com. Workers Loc. Union 44*, 699 P.2d 217, 220 (Wash. 1985); *see also Gordon v. Impulse Mktg. Grp., Inc.*, No. CV-04-5125-FVS, 2006 WL 624838, at *2 (E.D. Wash. Mar. 9, 2006) (requiring the

1 plaintiff to show a “particular relationship or expectation[.]”); *City of Clarkston v. Civ.*
2 *Serv. Comm’n-Fire*, No. 15119-1-III, 1997 WL 282501, at *3 (Wash. Ct. App. May 29,
3 1997) (same).

4 At trial, Zunum established that it had a prospective contractual relationship with
5 Safran, but substantial evidence does not support a finding that the contract had a
6 reasonable expectancy of fruition. Zunum argues that it and Safran were planning to
7 close a deal in October 2018 (Resp. at 43), but the evidence established that Zunum and
8 Safran were miles apart from one another at that time due to Zunum’s founders’
9 unwillingness to budge on their sky-high valuation of the company. Dr. Kumar testified
10 that Safran was “quite concerned” with his proposed valuation of \$160 to \$220 million
11 contained in an August 31, 2018 email. (5/23/24 Tr. (Rough) at 134:19-22; *see* Ex.
12 A-1616.) Safran countered with a \$40 million valuation, which Dr. Kumar described on
13 September 14, 2018 as “poor by any metric” and “[n]ot a good faith response.” (Ex.
14 A-1727 at 1.) Indeed, Safran’s offer was so “egregious” to Dr. Kumar that Zunum began
15 to shift its “focus . . . to generate alternatives to Safran financing.” (*Id.*) The next day,
16 Mr. Knapp “candid[ly]” reported that “if we don’t get terms out of Safran this week
17 we’re going to have to ramp down.” (Ex. A-373 at 2.) In late September or early
18 October 2018, Zunum “countered” with a proposed valuation of \$89 million. (Ex.
19 A-0121; 5/23/24 Tr. (Rough) at 52:15-17.) Safran refused to go up, however, and stuck
20 with its initial \$40 million valuation. (*See* Ex. A-290 at 1.) On October 25, 2018, Mr.
21 Knapp stated that Safran had “lowballed” Zunum and made “no attempt to provide [a]
22 fair valuation.” (Ex. A-384 at 2.) On November 2, 2018, Dr. Kumar labeled Safran an

1 “adversar[y]” and said that its “offers of financing were no more than a front to get
2 visibility to our program, to hobble us with preferential contracts/ROFR, and to drain our
3 resources in never ending negotiation.” (Ex. A-582 at 1.) Even after furloughing their
4 employees, Zunum’s founders still would not acquiesce to a lower valuation. On January
5 5, 2019, Dr. Kumar wrote the following to Mr. Knapp: “screw people who attack us for
6 \$120M, or my \$160-220M starting point. And Safran at \$40M is daylight robbery.” (Ex.
7 A-290 at 1.)

8 Mr. Knapp’s unfounded testimony that October 23, 2018 “was planned to be a big
9 closing day” and that Safran “sent a phalanx of vice presidents from France to go through
10 this and finalize this investment” falls well short of substantial evidence. (5/17/24 Tr.
11 (Rough) at 177:6-11.) Zunum introduced no additional evidence to corroborate Mr.
12 Knapp’s testimony—no calendar events, emails, other documents, or testimony from
13 anyone at Safran; indeed, according to Boeing, Zunum did not even attempt to depose
14 anyone from Safran. (Mot. at 39 n.10.) The court concludes that the threadbare
15 testimony from Zunum’s founders concerning the Safran deal amounts to no more than a
16 speculative inference that a deal with Safran was likely to close, and Zunum therefore
17 fails to surmount the substantial evidence standard. The evidence presented at trial
18 supports only one conclusion: Zunum did not have a reasonable expectation of a valid
19 business expectancy with Safran due to its founders’ hubris. Zunum’s hope that Safran
20 would raise its valuation and pursue a deal on its founders’ terms was nothing more than
21 wishful thinking. *See Sea-Pac Co.*, 699 P.2d at 220.

22 //


1 Because Zunum failed to provide substantial evidence of a valid business
2 expectancy, the court need not consider Boeing's additional arguments.

3 Accordingly, the court GRANTS Boeing's motion for judgment as a matter of law
4 on Zunum's claim for tortious interference with a business expectancy. This claim is
5 DISMISSED with prejudice.

6 IV. CONCLUSION

7 For the foregoing reasons, the court GRANTS Boeing's motion for judgment as a
8 matter of law (Dkt. # 695). Because Boeing has prevailed on all claims in this matter, the
9 court DENIES Zunum's motion for miscellaneous post-trial relief (Dkt. # 699) as moot.
10 The court VACATES its prior judgment (Dkt. # 686) and will enter judgment in Boeing's
11 favor.

12 Dated this 14th day of August, 2024.

13 
14 JAMES L. ROBART
United States District Judge